THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.35764 of 1997

ORAL ORDER:

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This writ petition is filed questioning the award passed in I.D.No.364 of 1993 dated 8.3.1995 on the file of the Labour Court-III, Hyderabad.

The petitioner is the workman and the first respondent is the management. It appears, petitioner was Driver working in the Respondent Corporation and while he was driving the Bus bearing No.AEZ-467 on 22.2.1990 on the route Jeedimetla to Charminar, a motorcyclist came under the rear wheel of the Bus and in the result he died. After conducting a detailed enquiry into the matter, the petitioner was removed from the service of the Corporation. Therefore, he filed a claim petition under Section 2A(2) of the Industrial Disputes Act, 1947 before the second respondent-Labour Court contending that neither enquiry was properly conducted nor the punishment imposed by the respondent-management is proportionate to that of the misconduct alleged.

The respondent-management filed a counter stating that the petitioner was appointed in the year 1984 and for the unsatisfactory service, he was imposed with several punishments earlier. On 22.2.1990 at 4.05 p.m. while the petitioner was driving the Bus, near traffic island towards Moosi River, the Bus dashed against a motor cycle coming from the right side proceeding towards Chaderghat. The accident was due to careless driving of the petitioner and lack of anticipation. On the basis of preliminary enquiry report, a charge sheet was issued and the enquiry was conducted giving full and fair opportunity to the petitioner. In view of the fact that the charges are proved against the petitioner, he was removed from service. The Labour Court has rightly appreciated the evidence on record and came to the conclusion that the petitioner does not deserve any relief whatsoever and rightly dismissed the claim petition.

The learned counsel for petitioner contended that the very charge is that the petitioner lacked anticipation and careless driving which resulted in the

accident. Further, the motorcyclist came under right side rear wheel and there was traffic island at the place of accident and naturally, the Bus is supposed to take 'U' turn. Further, the motorcyclist has driven the vehicle in a careless manner and due to skidding, he came under the rear wheel of the Bus. Therefore, it cannot be said that the petitioner is careless or lacked anticipation of the accident. The Labour Court erred in upholding the findings reached by the disciplinary authority.

Whereas, the learned counsel for respondents supported the award passed by the Labour Court and stated that absolutely no ground is made out calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material made available on record.

The charge is that the petitioner was careless and lacked anticipation while driving the Bus on 22.2.1990 at Traffic island near Imliban Bus Station. On the basis of preliminary enquiry, the enquiry was proceeded with and findings were recorded that the petitioner was negligent and also lacked anticipation of the accident. It is difficult to decide as to what exactly is the lack of anticipation. The question of anticipation does not arise unless it is found that the petitioner was grossly negligent in driving the Bus, which is hazardous to the public life. Further, it appears that the petitioner was acquitted of the charge under Section 304-A of Indian Penal Code in C.C.No.359 of 1990 by the competent Criminal Court i.e. learned IV Metropolitan Magistrate, Hyderabad through judgment dated 15.7.1991, wherein the learned Judge found that the prosecution did not chose to examine the eye witness and there was no iota of evidence against the accused to come to a conclusion that the accused has committed offence punishable under Section 304-A of Indian Penal Code, therefore, he was found not guilty of offence. In this case, the charge is that the accident occurred due to lack of anticipation. What exactly is the lack of anticipation is neither defined nor it is attributed in the very charge framed against the

petitioner. Further, the deceased came under the rear wheel of the Bus while the Bus was taking 'U' turn. Under those circumstances, I am of the opinion that even if there is any such lack of anticipation, the punishment of removal from service is shockingly disproportionate to that of the misconduct alleged against the petitioner. Further, no past conduct of the petitioner has been brought to the notice of the Labour Court or this Court to show that the petitioner deserves harsh punishment of removal from service. Therefore, I deem it appropriate to set aside the award passed by the Labour Court. Generally speaking, such matters require to be remitted to the Labour Court for passing appropriate orders under Section 11-A of the Industrial Disputes Act. Since it is more than 17 years the petitioner is out of employment, I deem it appropriate to give a quietus to the litigation at this stage itself.

In the result, the writ petition is allowed and the respondent-management is directed to reinstate the petitioner into service with continuity of service, attendant benefits notionally till the date of reinstatement, but without any back wages. The respondent-management shall reinstate the petitioner within a period of one month from the date of receipt of a copy of this order. No order as to costs.

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C.V.RAMULU, J

Date: 21.3.2007
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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.35764 of 1997

21.3.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.35764 of 1997

Date: 21st March, 2007

Between:

S.Yadaiah

.. Petitioner

And

The Depot Manager,
APSRTC, Jeedimetla Bus Depot,
Ranga Reddy district & another.

.. Respondents